

Hurricane Displacement and Voter Registration

Segue v. Louisiana

(*Kurt D. Engelhardt, E.D. La. 2:07-cv-5221*)

A federal complaint alleged that Louisiana's notification procedures for challenges to voter registrations based on evidence that the voters had registered elsewhere had not been precleared pursuant to section 5 of the Voting Rights Act. The district judge determined that preclearance was not necessary because Louisiana was giving more notice than it was precleared to.

Subject: Nullifying registrations. *Topics:* Registration challenges; section 5 preclearance; three-judge court.

On August 29, 2007, the NAACP filed a federal action in the Eastern District of Louisiana on behalf of a named voter and a hypothetical voter alleging that Louisiana was improperly purging its voter registration rolls of persons temporarily displaced by Hurricanes Katrina and Rita.¹ The complaint claimed that some of Louisiana's procedures for ensuring that its registered voters remained eligible to vote in Louisiana had not been precleared pursuant to section 5 of the Voting Rights Act, and so the plaintiff asked the court to convene a three-judge panel.²

The court originally assigned the case to Judge Stanwood R. Duval, Jr., but approximately two weeks after the case was filed the court reassigned the case to Judge Kurt D. Engelhardt because of the number of Katrina cases Judge Duval had received.³

On September 24, the plaintiff moved to expedite the case because a gubernatorial primary was to be held on October 20.⁴ Cognizant of the upcom-

1. Complaint, *Segue v. Louisiana*, No. 2:07-cv-5221 (E.D. La. Aug. 29, 2007), D.E. 1; see Robert Travis Scott, *Officials Sued Over Voter Purge*, New Orleans Times-Picayune, Aug. 31, 2007, National, at 2.

2. Brief, *Segue*, No. 2:07-cv-5221 (E.D. La. Sept. 21, 2007), D.E. 11; Notice, *id.* (Sept. 13, 2007), D.E. 9; see Voting Rights Act of 1965, Pub. L. No. 89-110, § 5, 79 Stat. 437, 439, *as amended*, 52 U.S.C. § 10304 (2014) (requiring preclearance of changes to voting procedures in jurisdictions with a certified history of discrimination and requiring that preclearance disputes be heard by a three-judge district court).

On June 25, 2013, the Supreme Court declined to hold section 5 unconstitutional, but the Court did hold unconstitutional the criteria for which jurisdictions require section 5 preclearance. *Shelby County v. Holder*, 570 U.S. 529 (2013).

3. Order, *Segue*, No. 2:07-cv-5221 (E.D. La. Sept. 11, 2007), D.E. 8; Docket Sheet, *id.* (Aug. 29, 2007).

Tim Reagan interviewed Judge Engelhardt for this report by telephone on May 4, 2012. He was elevated to the court of appeals on May 10, 2018. Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges. Judge Duval retired on January 31, 2017. *Id.*

4. Motion, *Segue*, No. 2:07-cv-5221 (E.D. La. Sept. 24, 2007), D.E. 12.

ing primary,⁵ Judge Engelhardt granted the defendants summary judgment on October 3.⁶

As the plaintiffs acknowledged, Louisiana had a precleared procedure in which it could, if it discovered that the voter was also registered in another state, provide a registered voter with a twenty-one-day notice that the voter's registration would be canceled unless the voter could show cancellation of registration in the other state.⁷ Louisiana had not yet precleared an additional procedure that it had already implemented in which Louisiana provided registered voters with an earlier thirty-day notice that their registration could be canceled because they registered in another state.⁸ The plaintiff had received the thirty-day notice, but her registration in Louisiana had not been canceled, so Judge Engelhardt determined that she lacked standing for want of injury.⁹ Moreover, because Louisiana was providing its voters with the additional protection of a thirty-day notice beyond what it had precleared, the plaintiff alleged no valid claim under section 5, so the complaint was without merit and a three-judge panel need not be appointed.¹⁰

Judge Engelhardt was able to resolve this case on paper, without any oral proceeding.¹¹ During the first few elections after the hurricanes, there were many efforts undertaken in Louisiana to address voter displacement, and several actions were resolved by the state courts.¹²

5. Interview with Hon. Kurt D. Engelhardt, May 4, 2012.

6. Order and Reasons, *Segue*, No. 2:07-cv-5221 (E.D. La. Oct. 3, 2007), D.E. 24, 2007 WL 2900207; see Robert Travis Scott, *Registrar Helps Thousands Remain Orleans Voters*, New Orleans Times-Picayune, Oct. 11, 2007, National, at 3.

7. Order and Reasons, *supra* note 6, at 2–3; Complaint, *supra* note 1, at 8.

8. Order and Reasons, *supra* note 6, at 2–3.

9. *Id.* at 4–7.

Were other courts to apply similarly stringent standing rules in challenges to registration practices, it could prevent many cases from getting into court, since it will often be difficult for plaintiffs to show that they were affected—and, even if plaintiffs' names are wrongly stricken, defendants may reinstate them once a complaint is brought, thus potentially mooting the case.

Daniel P. Tokaji, *Voter Registration and Election Reform*, 17 Wm. & Mary Bill Rts. J. 453, 482–83 n.256 (2008).

10. Order and Reasons, *supra* note 6, at 7–11.

11. Interview with Hon. Kurt D. Engelhardt, May 4, 2012.

12. *Id.* See generally William P. Quigley, *Katrina Voting Wrongs: Aftermath of Hurricane and Weak Enforcement Dilute African American Voting Rights in New Orleans*, 14 Wash. & Lee J. Civil Rts. & Soc. Just. 49 (2007); Damian Williams, Note, *Reconstructing Section 5: A Post-Katrina Proposal for Voting Rights Act Reform*, 116 Yale L.J. 1116 (2007).